Memorandum

Date: December 4, 2003

To: Mayor and Council
Planning and Zoning Commission
Melanie Hobden, Manager, Development Services Department

From: Helen Stern, Chair, Neighborhood Advisory Commission

Subject: Recommended Changes to Zoning Ordinance

At the December 3, 2003 meeting, the following was unanimously approved as recommended changes to the Zoning Ordinance:

We believe that Section 6-303, General Plan Amendment, adequately describes the purpose, applicability, procedure, and approval criteria needed for the Community Plan as proposed. We have determined that neither a Community Plan, nor a Specific Plan would be *inherently* described as a major amendment, leaving this determination up to the stated legal process.

We have made note that in the Zoning Ordinance, there are no application procedures (Section 6-300) provided for Overlay Districts. However, the Specific Plan as proposed is like an Overlay District, but is driven or defined by a Community Plan. Staff indicates that Overlay Districts are processed through Section 6-305. Therefore, we believe that Section 6-305, Zoning Map and Code Text Amendment also applies to Specific Plans. Thus, we recommend the following replacement text:

1. Section 6-303 General Plan Amendment

B. Applicability. There are two (2) types of amendments to the General Plan: amendments and major amendments. Any change to the maps or text of the General Plan is an amendment to the General Plan. A Community Plan is also an amendment to the General Plan. Any change determined by the Development Services Manager to be a major amendment has additional processing requirements. A proposed plan or project would require a major amendment to the General Plan if any one (1) of the following apply:

1. Delete.
2. Remainder of section as is.

2. Section 6-304 Specific Area Plan

Delete entire section, to be replaced by a separate process document, the forthcoming Planning and Public Involvement Policies and Procedures Manual.

3. Section 6-305 Zoning Map and Code Text Amendment

B. Applicability. Amendments to the text or zoning map of this Code, including Overlay Districts and Specific Plans, shall not be made except through the adoption of an amending code by the City Council and following the procedure prescribed in this Code.

Remainder of section as is.

B

Memorandum

November 10, 2003

To: Fred Brittingham, City of Tempe
Copy: Neighborhood Advisory Commission

From: Margaret Stout, Tempe Resident

Re: Proposed Zoning and Development Code, June 2003 draft

Fred, thanks so much for clarifying my questions last week along with Ryan Leveque—your time is greatly appreciated! The following is my input to the proposed ordinance re-write, for your presentation to the Planning & Zoning Commission. I am sorry that my class schedule makes participation in public hearings impossible for me this semester. Thank you so much for bringing the following comments and concerns to the Commission tomorrow evening!

Location	Issue
1-102 A	I am sorry to see that the term "effectiveness" is missing here. Certainly, efficiency is not all we are concerned about in governance.
1-102 B	The scope of the ordinance legally may have greater control over lot size, per ARS subdivision language. It is important to mention this here, as well as augment it if the re-platting for assemblage issue is inserted.
1-103 E	Part 5 contains the city's CURRENT (insert) overlay zoning districts…
1-201 D 2	Good to retain this option
1-203 A	Please refer to subdivision comments on re-platting for assemblage. Here it states "No plat shall be recorded… without compliance with the provisions of this code." Thus the assemblage re-platting must be addressed in this code!
Chapter 3	Thank you for each an every public hearing opportunity before the officers, boards, and commissions!
1-304 A & B	Please clarify whether it's the Zoning Administrator or HO and use the same abbreviations as above. I am also concerned that there be some type of criteria for appointing the HO—as in a staff member from Long-Term Planning instead of Current Planning staff who are actually working with applicants to get their projects through the process.
1-305 B 1	"Hear requests for subdivisions…" Then they should also hear requests for assemblages!! The point is the same—both types of change (divide or assemble) to the platting of parcels changes the character and development potential of a parcel of land. Both have consequences and should therefore be heard by the public and its officials via P&Z!

Location	Issue
1-306	This commission is not a welcome entity in terms of other redevelopment areas such as Northwest Tempe and Apache Blvd. Please note that attempts to expand the purview of this Commission will be taken as an attack on the community's right to public process. Also, the appeals process to the Superior Court that is noted in the City Council section for this Commission is not wholly clear.
1-308 B	Again, "Hear requests for subdivisions..." Then they should also hear requests for assemblages!! The point is the same—both types of change (divide or assemble) to the platting of parcels changes the character and development potential of a parcel of land. Both have consequences and should therefore be heard by the public and its officials via Council!
2-103	There needs to be a clarification in the code of how the density of existing zoning or the General Plan density guides whether a parcel is re-zoned to MU-1, 2, 3, or 4.
Part 3 Chapter 1	The use of the table matrices is really very helpful!
3-102	It does not make sense to have charter and private schools as not permitted in MP and MH/RMH/TP because with a use permit, they would need to attend to all concerns that would be the same or even different from AG and SFR.
3-102	This is an especially well thought through section.
3-201	This is probably a good place to address 2-103 concerns. The detail on the intensity of each level of MU really make sense. I'm very concerned about all MG districts being given a blanket MU-4 designation, however, just because these definitions were not available. I would like to see all MG zoned districts go through a public hearing to determine what MU they would actually be approved as upon adoption of this ordinance.
3-202	This is also a particularly well thought through section (A and B included). (Note that charter and private schools are also Use Permit in R/O.) However, I am concerned about financial institutions in R/O only because of the drive-through issue that they normally entail.
3-302	This doesn't appear to be as well thought-through as the other sections. For example, I see a focus on low-tech manufacturing rather than high-tech such as computer board assembly, bio-tech, etc. Yet, wouldn't we like to see this time of light industrial at Warner and I-10 or in some of the county island annexations?

Location	Issue
3-402	This is nearly precisely what Accessory Dwellings were conceived to be. They were proposed as a specific solution to a specific problem in specific neighborhoods. In Riverside, Mitchell Park East and Maple Ash, there are a number of single family homes on multifamily zoned land with back houses used as accessory dwellings. However, the standards under E would actually prevent development if a near zero lot line at the rear is not allowed. Furthermore, if you're under density and can build out without a use permit as a regular dwelling, what's the purpose of this now? Somehow, we lost sight of the intent of the idea, and it has been so watered down I see it as useless at this point. Can we remove this here and re-visit the concept as a part of either the Pedestrian Oriented Design Overlay or through Specific Plans for particular areas?
3-405 E 2	Please be clear as to who is having private social gatherings—is it the guests of the B&B or the owner/operators of the B&B? Please clarify so that some of our favorite folks like Joseph Lewis and the Lucier/O'Neill Barnes House know how to have a party within the ordinance!
3-407 B	I am concerned about the language used here. In terms of the state definitions for child care, there are two choices: Family Child Care Home and Day/Child Care Facility. In this section, ARS is referred to, and I'm concerned that we are mixing terms. Please be clear that this section *only* refers to Family Child Care Homes, not day care facilities. Please change the name, and only use that term in the title and subsections below.
3-410	"no provision is made for cooking" is significantly problematic and completely unenforceable. In today's world, a sink and an electrical outlet are all one needs for a kitchen. Why do we continue to have this? In essence, a Guest Room is really an Accessory Dwelling, whether you call it that or not!
3-412 A 1; D	I believe "not to give an outward appearance of a business" conflicts with the allowance of a one square foot sign. Please make note of this in the ordinance as an exception.
3-412 G	I'm concerned about two issues here: 1) barber shops and beauty parlors should be allowed uses if they meet all the other limitations of operation noted in this section (they would be a one-chair, one person operation in all likelihood); and 2) are massage therapists, masseuses, and chiropractors going to fall into the "massage parlor" category—how are they defined differently? They aren't in the Definitions section, yet some massage uses should be permitted.
3-414 A	It would help to use some of the same language as in Home Occupation here in regard to employees at any given time…
3-421	This is very important and helpful!

Location	Issue
4-202	I have to say that for a code seeking less prescription, this really is very prescriptive! However, I fully support prescription, so I am happy. However, it is very clear that these guidelines are more intense and more dense, and that the justification of this is the large number of variances granted over the years in terms of these standards. Well, I don't know that this is really a good justification, and I don't know that you have majority support for this intention. So, I will give you my personal vote—I support the level of intensification described here as a reasonable step toward more sustainable urban development.
4-203	I am very concerned about a tendency to privilege single family dwellings over multifamily dwellings. If we are to be the urban environment this ordinance is calling for, we simple must stop doing this!!! In all development standards that call for a step-down in heights adjacent to R1, this should be changes to any residential use that is less in height. Therefore, any commercial and mixed use building in excess of 30 feet should have to step down next to residential districts of 30 feet.
4-303 E	Nice touch!!
4-303 G	Thanks for getting shade of walkways and transit stops in here. It needs to be more clear in actual landscape standards for all development, however.
4-303 K	Thanks! There are some City developments that would not meet these criteria. (Like the square behind the 505 building.)
4-304 D	Please be clear that we are talking about ground level retention here, not storm drains or underground retention.
4-404	Height step-back issue described in 4-203 here as well. Great graphic for explanation, by the way!
4-502 F	This seems to be more flexible than in the past—thank you!
4-502 H 1	Thanks for limiting this.
4-503	This whole section is so great!
4-602 B 2	Thanks for the alternative surface materials (i.e. porous)!!
4-602 B 4	I am not comfortable with this being limited to R1. We have lost an important leverage tool here. We cannot allow commercial parking on multifamily zoned property either without a use permit or variance of some type. This has been lost from 808 and needs to be inserted!
4-603 C	Hoorah!!!
4-701 A	One of the stated purposes is to "provide shade" yet there is no clear standards in the section of *where* that shade should be. This can't only be discussed in terms of Transit Facilities as noted above. It must be discussed as a general development standard in Landscape as well.
4-702 A	Please be clear we are discussing ground-level water retention only, not underground retention which is proposed to be allowed. In regard to the details, I'm concerned that there be limitation criteria in regard to areas between the sidewalk and the building's entrance as well. No more "moats"!

Location	Issue
4-702 F	Here is the perfect place to talk about trees "planted as pedestrian shade" and specifying where in developments they should be (i.e. as shade for all pedestrian walkways and parking areas).
4-703 A	Again, there needs to be a standard for where the tree is planed. If you look at street trees planted along street frontages, they are often in the middle of a retention area or setback that doesn't even shade the sidewalk or bike lane. You need to have a standard for X number of feet from the sidewalk and/or street edge.
4-704 A 1	Again, I don't think that these standards adequately describe shade for parking bays in addition to designated pedestrian pathways in parking lots (which of course should be required!).
4-706 A 2	It seems like ten foot walls are really excessive. Why the increase from 6 in residential, 8 in commercial? I suppose that the required building permit covers any concerns over this (in 4).
4-706 D	The exception of city parks is good, but it really would be nice to require gates through fencing of those parks for residents in those apartments to use. See Jaycee Park as an example of this problem. It is severely pedestrian unfriendly to do this.
4-903 J	Yikes! I really don't want freeway signs along the Rio Salado for the 202.
4-903 N	I think that this issue needs to be more clearly described as not visible from the street—that's really a greater concern than their existence at all.
4-903 R 3	I don't see why pumper-topper signs are not counted toward the total sign area of the business. If so, they should be limited only to instructions and not advertising copy for any product sold. Come on, this is un-necessary advertising and nothing different than street billboards!
4-903 V 2 c	Signs exceeding the high of the building? This suggests that so long as it is attached to the building, it could go from ground to roof—that would be huge!
5-301 A	I believe that this is the whole single family district privilege thing again. This ordinance should apply to any residential district in an infill environment like ours!
6-101	This entire section is infinitely better to work with—thanks!!
6-101 A	It says here that a Lot Line Adjustment requires a decision by City Council. Yet, the Definitions given for what is considered a lot line are unacceptable. A lot line defines a parcel on all sides. If that line is either moved or removed, the lot line has been changed and should be required to have a hearing before a decision-making body. I request that just like the Lot Split, all Lot Line Adjustments (including removal of the line via a lot-tie or abandonment for assemblage) be heard before a Decision-Making Body and Appealed to the City Council. This requires a change in this matrix, as well as the Definitions of what a Lot Line is considered to be.
6-302 B	Applicability of "subdivision" needs to also include "assemblage" of parcels.

Location	Issue
6-303	I support the NAC recommendations for changes here.
6-304	I support the NAC recommendations for changes here.
6-305	I support the NAC recommendations for changes here.
6-308	Please include Lot Ties and other forms of assemblage in this section. Clearly, assemblage is absolutely consequential to "the orderly growth and harmonious development of the city" as stated here!
6-308 B	Add a fourth applicability criteria for Lot Ties or Lot Line Abandonment—removal of a lot line coinciding with a recorded re-platting. It would seem, however, that this would be covered under the definition of Lot Line Adjustment if the Definitions were changed. (These are technical details for staff.)
6-308 C	If Lot Ties or Lot Line Abandonment are added, the procedures would be the same as Lot Splints or Lot Line Adjustments.
6-309 L	This begins with some incomplete sentences that should be edited.
6-310 G	I have to say that with adoption of this ordinance, I believe the community is going to have some fairly high expectations that the City's review process will no longer be a variance free-for-all!
6-402	Thanks for making this pertain to all residential uses. It is the one instance that sets the precedence for a lack of single family privilege!
6-406 A	Please add that staff must include a statement regarding the neighborhood meeting summary provided by the Applicant.
6-802	Thank you for making appeal available to any party!!!
6-902 B	I am concerned about how to revoke permits or development approvals on projects that become altered significantly from initial proposal attached to a zoning change to what actually gets built, often through changes in ownership as well as project design. I will use the Architekton project at 5th and Farmer as an example, and a concern about the future project at Beck and University as another. Both were brought by Benton/Robb Development as proposed projects for development in order to garner zoning changes to a greatly intensified use. Neither projects were delivered and yet the zoning change held. We simply must come up with an ordinance solution to prevent these types of issues. So far as the community is concerned, these are nothing more than "bait and switch" tactics on the part of the development community that cause severe mistrust and problems for legitimate projects.

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November 21, 2003

Fred Brittingham
Principal Planner, AICP
City of Tempe
115 East Fifth Street, Suite 1
Tempe, AZ 85281

Re: Comments on Preliminary Draft Dated June, 2003
Tempe Zoning and Development Code Re-write

Dear Fred:

Thank you for the opportunity to provide review and comment on the draft of Tempe's new Zoning Ordinance. We are impressed at the new organization and it is obvious that you and the consultants have spent a great deal of time on this document. Once approved, it will be one of the easier Ordinances in the Valley to use. We specifically support the proposals to: expand the Design Review Staffs' authority to approve building expansions and modifications up to 5,000 square feet; the consolidation of the CCR, C-1 and C-2 zoning districts into the Commercial Shopping and Services (CSS) district; add residential to the potential mix of uses in most shopping centers through a use permit; add a higher density multi-family district; modify some setbacks in several districts; retire the Multi-Family Quality Study.

We do have concerns (see below) about the change in appointment of the Hearing Officer, the addition of parking maximums; deleting the ability to obtain a use permit for shared parking projects, the proposal that lot assemblies now require a public hearing and the narrow use list in the industrial zoning districts:

Responsibility to Appoint the Hearing Officer

We noticed that the appointment of the Hearing Officer is now proposed to be given to the City Attorney or their designee. We believe the current system administered by the Planning Staff has been functioning all these years without any apparent problems. If it is not broken, why fix it? The Planning Staff is most acutely aware of planning

issues and has been very sensitive to not make any decision that could not be fully supported by the facts; those in interest or those who may be affected by the decision. All requests with those characteristics have been referred on to the Board of Adjustment. We recommend that the current Hearing Officer system not be changed.

Expanded Authority of the Planning and Zoning Commission

Although it might be assumed that expanded authority for the Planning Commission could enable additional opportunities for expedited processing, we believe that the additional authority to approve or deny variances and use permits is a confusing and unnecessary duplication. Use permits and variances already are decided primarily by the Hearing Officer and Board of Adjustment. In site plan applications and PAD requests, use permits and variances can also be decided by the City Council. Adding or introducing the Planning Commission into this mix as a third or fourth entity that can act upon use permits or variances would be counterproductive.

Parking Maximums and Deletion of Shared Parking by Use Permit

The City of Tempe was an innovator in the creation of the use permit process to approve shared parking situations instead of parking reductions, which is a fundamental difference. The City of Phoenix also adopted the use permit concept for shared parking in their recent Zoning Ordinance update. Although we have for years obtained parking variances for shared parking situations, it is difficult to overcome the stringent variance test required by law. A use permit is the most appropriate analysis because it has the flexibility to recognize actual parking usage which the Zoning Ordinance could never anticipate. We believe strongly that the shared parking by use permit should remain in the Zoning Ordinance.

The requirement that there be parking maximums, we understand is intended to preclude excessive amounts of asphalt, especially where a large parking field is really not needed or used. Years ago, all ordinances were based on generous parking minimums that were intended to eliminate problems associated with on-street parking or parking in adjacent neighborhoods. Now, adding parking maximums runs the risk of recreating or returning to these problems. Also, having represented many of the larger retail users and shopped at their stores, we know from experience that their parking demand routinely exceeds the ordinance standard. We understand the concern, but we believe parking maximum will be counterproductive—at least until mass transit has significantly used our reliance on the automobile.

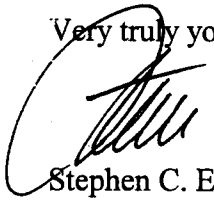
Limited Industrial Use List

We have no objection to consolidating the I-1 and I-2 Zoning Districts into one district but the proposed use list is either too specific or too narrow. For example, although this district is where manufacturing should occur, only wood, ice, electronic instruments, ball bearings, boxes, coffee/chocolate, poison manufacturing are proposed to be allowed by right. Also, this is the best district for light repair of lawn mowers or the assembly of engines or other similar use. We also do not see any mention of machine shops or plastic companies.

Finally, we recommend that the definition of Building Height be rephrased to add the phrase "whichever is higher" after the reference 'from the grade or top of curb.' If you agree, the definition would read: The vertical distance measured from the grade or top of curb "*whichever is higher*" to the highest point of the roof including any parapet.

We would be happy to discuss our comments with you. And thanks for giving us the chance to provide our input.

Very truly yours,



Stephen C. Earl

SCE/GVK/mr

O:\INDEX\ADMIN\GVK\LTRS\Brittingham (Tempe Ord).doc

12 November 2003

Dear Members of the Planning and
Zoning Commission and City Staff,

I am Trevor Barger. I live at 728 west 9th street.

I represent the area generally known as Mitchell's 3rd subdivision block 1, specifically, Alphagraphics, The City of the Lord, Charles Connelly, May Yoder, the homeowner of lot #17, and my own interest in my home.

We would like to voice our support of Development Services recommendation in the executive summary not to make lot assemblages public hearings. Doing so would have complicated many other issues within this document, and would have further discouraged redevelopment efforts along University Drive.

There are several technical issues we would like to call your attention to. The first arises with the density calculation, when already developed property is rezoned. When the area initially developed, the density of the site, for zoning purposes, was based on the gross site area, and included areas that would eventually become dedicated roads, alleys, parks, schools, and other public facilities and areas. In doing so, the developer was allowed to sell residential lots, as long as they met the minimum lot size requirement. In our area, that allowed for 6000sf lots since we have R1-6 zoning. When this same property is now rezoned, after development, the existing roads, alleys, parks and schools no longer sit on land owned by the applicant. Because of this, only the land actually owned is considered for the density calculations. The owner of a 6000sf R1-6 zoned lot with one home on it currently owns property the city would say currently has a density of 7.26 du/ac. [43560 (number of sf in an acre) / 6000sf (the number of sf per house)] Any rezoning of the property may not allow the property owner to continue to keep the same number of units currently existing.

We should be clear about existing densities, and the densities that truly result from each of our zoning categories. Doing so will make rezoning less cumbersome. When our block gets rezoned in the future to Mixed Use as suggested by the General Plan, if we wanted to keep the same homes on the site, we would apply for MU-1 which allows for 10du per acre. The neighbors may easily get up in arms as we are going from R1-6 which suggests it is limited to 4du/ac to an MU district at 10du/ac, when in actuality the entire R1-6 neighborhood is already above 7du/ac.

ORDINANCE 808

ZONING REQUIREMENTS

YARD, HEIGHT, AREA AND DENSITY

ZONING DISTRICT SYMBOL	DISTRICT NAME	MAXIMUM			MINIMUM						
		DENSITY d.u./acre	BUILDING HEIGHT in feet	LOT COVERAGE %	NET SITE AREA	LOT WIDTH in feet	LOT DEPTH in feet	SETBACKS in feet			
								FRONT	SIDE	REAR	STREET SIDE
AG	AGRICULTURAL	1	30 I	20	1 acre	115	150	40	20	35	25 A
R1-15	ONE FAMILY RESIDENTIAL	2.40	30 I	40	15,000 sq. ft.	115	120	35	15	30	20 A
R1-10	ONE FAMILY RESIDENTIAL	2.80	30 I	40	10,000 sq. ft.	90	100 B	30	10	25	15 A
R1-8	ONE FAMILY RESIDENTIAL	3.35	30 I	40	8,000 sq. ft.	80	100 B	25	7	20	10 A
R1-7	ONE FAMILY RESIDENTIAL	3.75	30 I	40	7,000 sq. ft.	70	100 B	25	7	15	10 A
R1-6	ONE FAMILY RESIDENTIAL	4.00	30 I	40	6,000 sq. ft.	60	100 B	25	7	15	10 A
R1-5	ONE FAMILY RESIDENTIAL	6	30 I	NS	5,000 sq. ft.	NS	NS	20	5	15	10 A
R1-4	ONE FAMILY RESIDENTIAL	8	30 I	NS	4,000 sq. ft.	NS	NS	20	O D	15	10 A
R1-PAD	ONE FAMILY RESIDENTIAL (J)	NS	NS I	NS	1/2 acre	NS	NS	NS	NS	NS	NS A
R-2	MULTI-FAMILY RESIDENTIAL	10	30 C	40	7,200 sq. ft.	60	100	25	10	15	25
R-3R	MULTI-FAMILY RESIDENTIAL RESTRICTED	15	15 C	40	6,000 sq. ft.	60	100	25	10	15	25
R-3	MULTI-FAMILY RESIDENTIAL LIMITED	20	30 C	40	6,000 sq. ft.	60	100	25	10	15	25
R-4	MULTI-FAMILY RESIDENTIAL GENERAL	24	35 C	40	6,000 sq. ft.	60	100	25	10	15	25
MHS	MANUFACTURED HOUSING SUBDIVISION	5.50	15	40	5 acres	60	100	25 F	7 F	15 F	10 F
RMH	MOBILE HOME RESIDENCE	7	30	50	5 acres	50	70	5 F	5 F	5 F	20 F
TP	TRAILER PARK	14	30	50	5 acres	30	55	10 F	5 F	5 F	20 F
R/O	RESIDENTIAL OFFICE	10	15 H	35	6,000 sq. ft.	60	100	25	10	15	25
CCR	CONVENIENCE COMMERCIAL RESTRICTED	NS	15 H	35	6,000 sq. ft.	60	100	20	10	15	20
C-1	NEIGHBORHOOD COMMERCIAL	NS	30 H	NS	NS	NS	NS	15	0	0	15
PCC-1	PLANNED COMMERCIAL CENTER	NS	30 H	25	2 acres	250	250	50	40	40	50
C-2	GENERAL COMMERCIAL	NS	35 H	NS	NS	NS	NS	10	0	0	10
PCC-2	PLANNED GENERAL COMMERCIAL CENTER	NS	35 H	25	5 acres	500	500	60	60	60	60
CCD COMMERCIAL	CENTRAL COMMERCIAL DISTRICT	NS	35 H	NS	NS	NS	NS	10	0	0	10
CCD RESIDENTIAL	CENTRAL COMMERCIAL/RESIDENTIAL	40	35 H	40	6,000 sq. ft.	60	100	25	10	15	25
MG	MULTI-USE GENERAL DISTRICT	G	G E	G	1 G acre	150 G	150 G	25 G	0 G	0 G	25 G
RCC	REGIONAL COMMERCIAL CENTER	NS	75 G	50	50 acre	NS	NS	60 K	60 L	60 L	60 K
IBD	INDUSTRIAL BUFFER DISTRICT	NS	30 H	40	NS	NS	NS	50	12	12	35
I-1	LIGHT INDUSTRIAL	NS	30 H	50	NS	NS	NS	30	12	12	30
I-2	GENERAL INDUSTRIAL	NS	35 H	NS	NS	NS	NS	25	0	0	15
I-3	HEAVY INDUSTRIAL	NS	35 H	NS	NS	NS	NS	25	0	0	15

NS No applicable standard or limit.

A. The street side yard of corner lots adjacent to key lots, shall be increased by 10 additional feet.

B. All reverse frontage lots on arterial street and freeway right-of-ways shall be a minimum of 110' deep.

C. Where building heights exceed 15' and are located adjacent to a Single Family Residence District, one additional foot of setback to the yard adjacent is required for every foot of building above 15'-0".

D. 0' for lots with common walls; 10' for lots without common walls.

E. Where the MG District is adjacent to a Single Family Residential District, the setback shall be one additional foot for every foot of building height or a maximum 50' of setback.

F. Minimum distance of any portion of the mobile structures and accessory structures from the rental lot lines.

G. Restrictive standards may be required.

H. Where multi-story building heights exceed 15' and are located adjacent to any residential district, one additional foot of yard setback is required for every foot of building height above 15'-0" Where no setback exists, a minimum of 25' shall be required.

I. Second story additions to an existing residence shall require a Use Permit to achieve the allowable height.

J. Requires approval of a Planned Area Development.

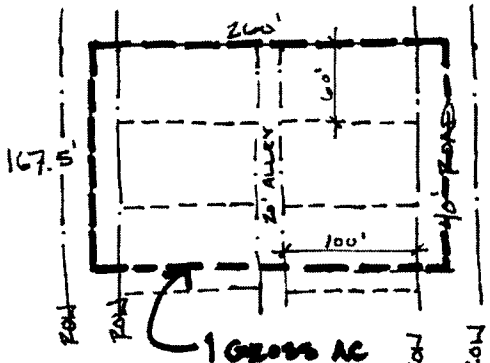
K. 40' building setbacks are allowed for pad sites for front and street side yards in conjunction with a minimum 25' landscape setback.

L. 20' building setbacks are required for pad site side and rear yards.

May 1996

NEW DEVELOPMENT

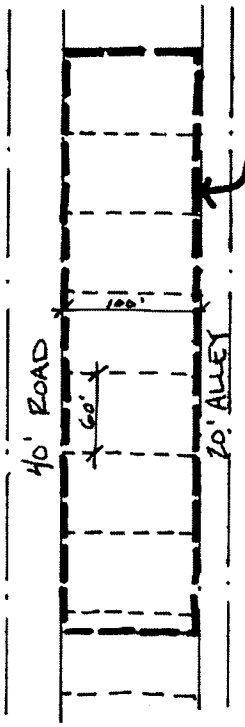
1 AC R1-6 MIN LOT SIZE 6000SF
GROSS 60' MIN LOT WIDTH



1 GROSS AC
5.58 DU/AC
INCLUDING ADJACENT INFRASTRUCTURE

"POST WWII" NEIGHBORHOODS WERE CONSTRUCTED WITH THE MIN. LOT SIZE AND MIN. LOT WIDTH.

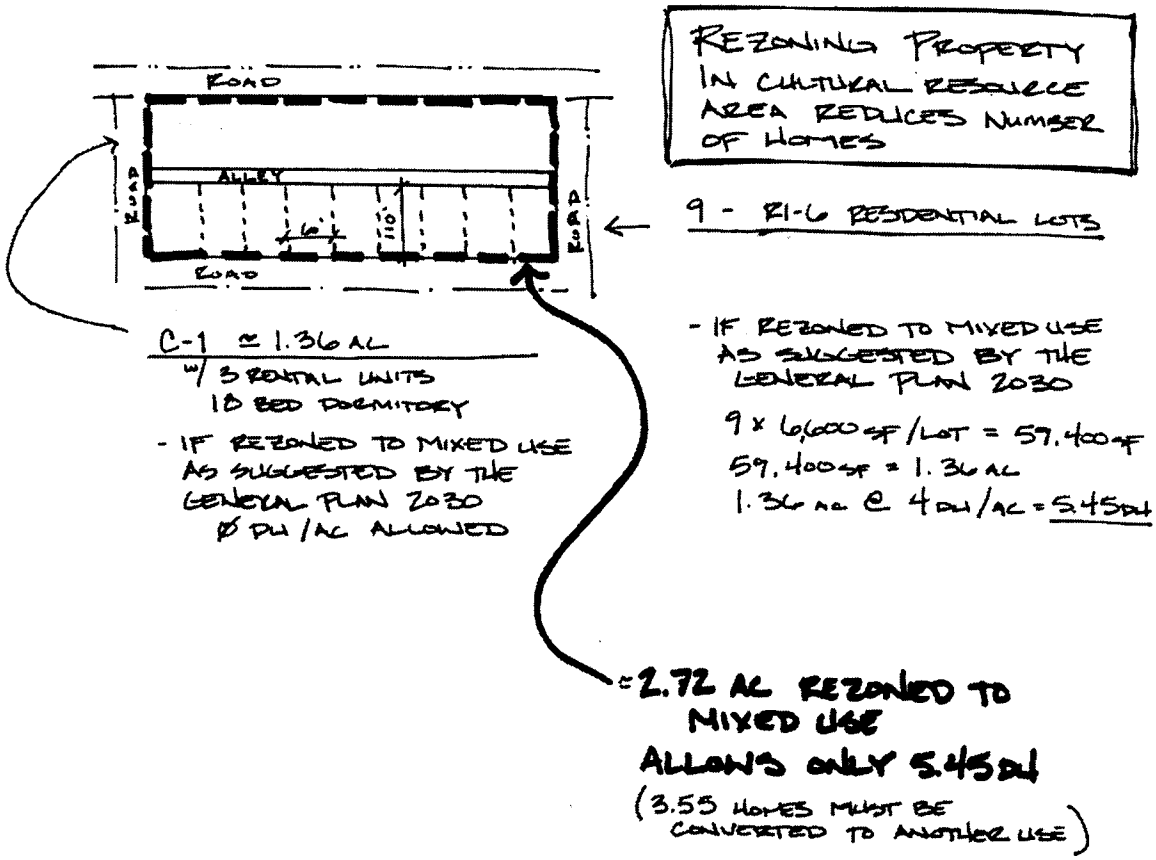
RE-DEVELOPMENT



1 NET AC
7.26 DU/AC
LAND OWNERSHIP ONLY

R1-6 MIN LOT SIZE 6000SF

60' MIN LOT WIDTH



This anomaly is most dramatic in already developed single-family residential areas as you can see by the table below.

Density Discrepancy Table

Zoning District	Density	Min. Lot Size (or area/unit)	Density by Min. Lot Size
Major districts in our neighborhood			
R-2	10 du/ac	3,600 sf	12.10 du/ac
R-3R	15 du/ac	2,900 sf	15.02 du/ac
*R-3	20 du/ac	2,200 sf	19.80 du/ac
R1-6	4 du/ac	6,000 sf	7.26 du/ac
Other districts potentially affected			
R-4	24 du/ac	1,800 sf	24.2 du/ac
R1-4	8 du/ac	4,000 sf	10.89 du/ac
R1-5	6 du/ac	5,000 sf	8.71 du/ac
R1-7	3.75 du/ac	7,000 sf	6.22 du/ac
R1-8	3.35 du/ac	8,000 sf	5.45 du/ac
R1-10	2.80	10,000 sf	4.36 du/ac
R1-15	2.40 du/ac	15,000 sf	2.9 du/ac
AG	1 du/ac	43,560 sf	1 du/ac

*This one zoning district has the reverse issue. 20 du/ac should be a 2,178 sf min. lot size. This should be adjusted in the zoning re-write.

To resolve this issue, we recommend adding a column to the zoning chart (table 4-202A) that allows density in already developed areas, at time of rezoning, to be based on the zonings' minimum lot size. This recommendation will not increase the allowed density in these areas; it will only allow the density to be calculated properly for already developed areas. This would bring the existing conditions of the neighborhoods in line with how the Planning and Zoning Staff calculate density at the time of re-zoning.

The second issues we would like you to consider is allowing the front and street side setbacks in single family districts (shown on table 4-202A) to be measured from the back of street/sidewalk improvements. This in important in our neighborhoods as many of them developed sporadically and now have varying right of way widths. Allowing these setbacks to be measured from back of improvements will give our streetscapes a more uniformed appearance. Otherwise the setbacks are measured from an invisible line somewhere in the area we consider our front yards.

The third issue we would like you to consider is allowing an exception to rear setbacks (shown on tables 4-202 A-C and 4-203 A&B) when an alley is present for all zoning districts. We suggest that no setback is necessary. This is already the built condition found often in our neighborhood, and it has worked well so far.

The forth issue we would like you to consider is adding to Sec 4-102 E "Maintenance" a paragraph that limits the length of time a building may be in operation with windows boarded up. We understand that there should be some accommodation for buildings which are temporarily vacated, or damaged, but when the primary on-going operation of a building has changed and the windows are no longer desired, boarding them up should not be a long-term or permanent solution. In our neighborhoods when this condition is allowed, it brings down the quality of the area.

The fifth issue we would like you to consider is how Sec 4-502 E.2 is enforced. We have been living with this condition for a couple of years now, and have called repeatedly about this issue of accessing commercial properties from residential allies. During the Vale approval it was brought to our attention that this was not allowed in the city, but as neighbors living with that condition, we have no way to enforce the regulation. What is the mechanism that will enforce this issue?

In the same section, 4-502 I states that all driveways must have a vertical clearance of 13'6". In my front yard I use trees to fill out the landscape and provide shade. It seems odd to have to trim them up to 13'6" to maintain a clearance for my driveway that is only 50' long. Please exempt single family districts from this requirement.

The section on Parking ratios particularly bicycle parking within the commute area make us nervous. While we support supplying bicycle parking, there is no discussion in the code like there is for vehicle parking about what the requirements are, nor if shared parking arrangements can be made. By the requirements outlined in table 4-603 E, the Tempe Mission Palms would need 300 bicycle parking spaces for their rooms plus additional for conference, and other uses, but no accommodation is made to allow them to share spaces with Ra, the sushi restaurant, next door a place their guests might easily frequent on foot. If these requirements have to be met, each individually Mill Avenue will need thousands of additional bicycle parking places. Please re-look at these requirements, reduce them, or add additional clarity about how they are to be provided and if they can be shared.

Section 4-703 A.2 requires street trees along all streets. Many of the older residential neighborhoods and commercial developments were not designed to accommodate street trees. We ask that you consider how this will be enforced in single family neighborhoods, and that you consider the impact of trees placed every thirty

feet on the visibility of commercial centers. We appreciate the intent of the regulation to provide shade to pedestrians, but question if it is enforceable or desirable everywhere.

Sections 4-803 D.2&6 require that carport parking structures and walkways be lit from dusk to dawn. While we understand this from a safety perspective, it is not always desired in close proximity to (across the alley from) single-family residential homes, and would not be desired at all on a single-family home. Please remove single-family homes from these requirements, and add a provision that allows for dimmer lights in proximity to other dark areas. In our neighborhood, Guedo's was required to install this type of lighting, and now to the detriment of the neighborhood, you can see their place clearly all the way down the street. It is too bright in its context, and as such makes other places unsafe, and undesirable to be in.

There are a few other issues that will limit our neighborhood's ability to re-develop itself, and we feel should be brought to your attention.

a. Sec 4-304 D Storm Water Retention Required. This is a difficult issue in already developed parts of the city. There is no accommodation for transferring the requirement to other sites; the city staff does not like using underground containers to accommodate this requirement, and not being able to use the landscaping in the right of way only make it more difficult to accomplish this already difficult task.
b. Sec 4-702 A Water Retention Area Landscape Standards. These requirements as mentioned above make a difficult task even more difficult.
c. Sec 4-702 E River Rocks. This requirement makes since when the rocks are being placed on a slope that is expected to carry water, but if they are placed on the bottom of the retention areas, concrete would be counter productive, only slow the seeping of the water into the ground. Loose rocks should be allowed over the cemented in base course and cement should not be required in areas without slope.
d. Sec 4-404 Building Height Step-Back. It is unclear if this regulation will be applied when a non-single family residential district is across the street from a single family residential district.
e. Figure 4-502 F Fire and Refuse Vehicle Maneuvering Diagrams. In other communities these have been reduced slightly. (41.5' outside back of curb radius, 24.5' inside back of curb radius, 45' outside radius clear zone – crushable vegetation) These small reductions are very helpful in pedestrian oriented redevelopment areas. Please due everything we can to reduce these dimensions safely.
f. Sec 4-602 B.3 allows parking on contiguous lots, but should also allow parking on lots of similar ownership in relative close proximity with easy access. The City of the Lord owns property on our block, but because they have not joined all of their lots, some of their lots are not contiguous with the lots they use for parking.

Thank you for your time and patients.

P.S.

Underlined text denotes requested changes.

MEMORANDUM

TO: Fred Brittingham
FROM: David K. Jones
DATE: December 4, 2003
RE: Sign code

Thank you for providing portions of the latest sign code materials to me. As I mentioned in the voice mail I left for you this morning, it looks like we are much closer than I thought. I wanted to thank you and the staff for your thoughtful consideration of our previous comments.

There remain a few issues. Let me first address those that I think can be solved by small language changes:

1. Ceased Nonconforming Signs (Sections 4-902.E and Definition). There continues to be a blurred distinction between a sign that is displaying no copy (or obsolete copy) and a sign structure that is abandoned. Lumping them together and requiring removal after 12 months, doesn't get us past the Supreme Court of Arizona's ruling in the *Aldabbagh* case that a nonconforming use can't be required to be removed merely after the passage of a period of non-use. In addition, the current language of the draft has some enforceability problems. I could argue that the "ceased nonconforming sign" definition sanctions the use of illegal (and not legal nonconforming) signs for 12 months. I can also envision a scenario where the use of the sign structure has been abandoned, but where the continuing operation of the business on the property precludes a forced removal under Section 4-902.E. I would suggest that the concepts of obsolete (or vacant) sign copy and abandoned nonconforming structures (whether you call it "ceased" or otherwise) be separated, with the obsolete material put in the code section on maintenance.

Add a new subparagraph 8 to Section 4-902.I (Sign Maintenance) as follows:

8. Sign copy which no longer identifies an existing use or product available on the premises shall be removed by covering the sign face, replacing the sign face with a blank sign face, or replaced with sign copy that identifies a use or product currently available on the premises.

To avoid the *Aldabbagh* problem, I think the definition of a "ceased nonconforming sign" can be tweaked to, in some cases, have the sign immediately removable, and in uncertain cases, to set up a rebuttable presumption that the sign owner does not intend to re-use the sign structure, as follows:

14. *Sign, ceased nonconforming* means a nonconforming sign which is not currently used to display sign copy relating to a use of the premises and where the landowner has manifested an intent not to re-use the sign for the display of sign copy relating to a use of the premises. A nonconforming sign shall be presumed to be a ceased nonconforming sign when it has not displayed sign copy relating to a current use of the property for any continuous period of twelve (12) months or more.

With those changes, Section 9-402.E can be simplified:

E. Ceased Nonconforming Signs. The owner, agent, tenant or person having beneficial interest in the business, property or premises on which a ceased nonconforming sign is located shall immediately remove such sign.

2. Menu Boards. We have discussed that there is no provision for the types of menus used by drive-in (not drive thru) restaurants, like Sonic. We ought not omit consideration of these. My suggestion is that a subparagraph be added to Section 9-403.N to address it. You should probably contact Sonic, or measure the signs, to make sure the numbers I am suggesting are adequate:

3. Freestanding Menu Board requirements for drive-in restaurants, where food service is provided to people in their vehicles, are as follows:

   a. Shall not exceed twelve (12) square feet in area nor eight (8) feet in height;

   b. One sign per drive-in service parking space is permitted, provided the sign is oriented for view from the parking space;

   c. The sign(s) shall not be placed within a clear vision triangle and shall not conflict with ADA accessibility requirements;

   d. The sign area for the menu board(s) shall not be counted in the total aggregate sign area for the business in determining the allowable sign area for the business; and

   e. May be illuminated, subject to obtaining a sign permit, and may emit sound only as part of a transaction of business. Sound emission must comply with Tempe City Code 20-6.

3. Theater Signs. I can envision a theater sign on a freeway sign, where a theater is part of a project that qualifies for a freeway sign. Obviously, the height and area for a stand-alone theater sign would be inadequate for such an application, but there should likewise be no increase in height or area for the freeway sign. My suggestion is to tweak Section 9-403.V.3.b, as follows:

   b. Maximum height, including any supporting structures, shall be eight (8) feet, and maximum area shall be twenty-four (24) square

feet; except that, if such sign is incorporated into a freeway sign, it shall be limited to the height and area permitted for freeway signs;

4. Design Review Approval Criteria (Section 6-307.D.q). I appreciate the "fleshing out" of the design review criteria for signs. The term "size" is inappropriate, as size is a code entitlement, but what D.R. really regulates is the appropriateness of the proportions of the sign as compared to the architectural feature it is placed on. The phrase "based on" in the first sentence is somewhat ambiguous – the same? Similar? Compatible with? – It is really compatibility we are looking for, so we should say so. Likewise, in subparagraph 3, the phrase "same or similar" may stifle creative use of different, but complementary, materials in different signs. Let me suggest rewording this subsection as follows:

q. Signs must have design, scale, proportion, location and color compatible with the design, colors, orientation and materials of the building or site on which they are located. The decision making body shall consider the following:

1. Sign copy shall contrast with its background;

2. Sign copy shall be proportional to the size of the building element on which it is located;

3. Signs for complexes or centers shall utilize materials which are complementary to the building and to the other signs on the premises.

5. Changeable copy signs. The concern with limiting the use of changeable copy signs to things like theaters and gas stations, as expressed in my July 29 memo, remains. Why may a gas station post their prices, but a motel (which equally has customers who choose on price alone) may not? Why can a shopping center not provide a forum for identifying all tenants, on a rotating basis, on their freestanding sign, since not all tenants can be displayed at once? As long as the message appears static, where is the harm? Bottom line, changeable message signs are mainstream, and schools regularly use them (even in Tempe) without adverse consequence. There are code provisions that can be added to exercise great control over their use, to permit message changes to occur in a very subtle fashion.

6. Freeway signs. 120 square feet provides little area for legible lettering viewed by people in cars moving at 55 mph. It places us at a competitive disadvantage with our neighboring communities (Phoenix allows 200-250 s.f., Chandler has approved signs over 200 s.f., Gilbert allows 500 s.f.+, and Mesa is considering a code change that would have no set area limit).

7. Definitions. I have expressed some concerns, in my July 29 memo, relating to the definitions for an "intermittent or flashing sign" (practical considerations, enforceability) and "political sign" (legal considerations) that have the strong potential to create problems later. As this is a comprehensive code revision, it makes sense to resolve those issues now.